

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-248

LORETTA WILKERSON

APPELLANT

VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

** ** *

The Board at its regular February 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 5, 2015, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 20th day of February, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Stafford Easterling
Loretta Wilkerson
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-248**

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APPELLANT

VS.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on December 9, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Loretta Wilkerson, was present at the hearing and was not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Stafford Easterling. Appearing as the Agency representative was Deputy Commissioner Kim Potter-Blair.

BACKGROUND

1. This matter involves a five-day suspension given to the Appellant by letter dated August 28, 2014. A copy of which is attached hereto as "**Recommended Order Attachment A.**" In summary, the Appellant was suspended for poor work performance for failing to accurately perform her job duties, which resulted in some inmates being released after their minimum expiration date.

2. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the suspension was appropriate under all surrounding circumstances and was neither excessive nor erroneous.

3. The Appellee called as its first witness the Appellant, **Loretta Wilkerson**. She testified that she has been employed with the Agency as an Offender Management Specialist since September 2012. Some of her duties include processing serve outs and reviewing and processing shock probation and home incarceration issues. She added that she processes the paperwork, which provides for the release of inmates from their prison sentences. The Appellant

is employed in the Frankfort office of the Agency. She also stated that she previously worked at the Marion Adjustment Center in St. Mary, Kentucky, where she processed the same type of paperwork.

4. The witness confirmed that she had previously received a written reprimand in early June 2014 for failing to register two sex offenders. The Appellant stated that this was a paperwork error on her part. She also admitted that she has previously received a one-day suspension dated June 16, 2014, for having made paperwork errors which resulted in certain inmates being released prior to the expected released date.

5. The witness also confirmed that the original one-day suspension was initiated as a three-day suspension, but reduced by Deputy Commissioner Kim Potter-Blair. (Appellee's Exhibits 1 and 2.)

6. The Appellant was questioned as to why she felt the present suspension issued to her should be less than five days. She replied that it had resulted from her having received two e-mails on the same day at the same time from the same person, which she mistakenly thought were duplicates. She then acknowledged that by failing to open both e-mails, she had failed to see that the attachments to each e-mail were different and contained references to different statutory requirements. She confirmed that her failure to open both these e-mails resulted in a paperwork error which caused two inmates, Gregory Sanders and Stephen Miles, to serve sentences fourteen days longer than they should have. She also acknowledged that the result of this error cost the Agency money in having to house these inmates for the additional days, and admitted that this error could have possibly exposed the Agency to legal liability.

7. The Appellant then concluded by stating that she felt a lesser suspension of three days would be more appropriate.

8. However, before concluding her testimony, the witness did testify that the five-day suspension handed down had originally been intended to be a ten-day suspension, but that it had been reduced to the present day five-day suspension. She also admitted that she had at one pre-conference hearing stated that a five-day suspension would be more appropriate rather than a ten-day suspension.

9. Appellee's next witness was **Kim Potter-Blair**. She has been the Deputy Commissioner of the Agency for approximately seven years and is based in Frankfort. Her duties include overseeing Administrative Services, which includes Offender Information which is processed by the Appellant and others. She is the fourth-line supervisor over the Appellant.

10. This witness testified that the Appellant's supervisor had come to her and informed her that because of the Appellant's paperwork errors, two inmates had been held beyond their release date. She confirmed earlier testimony that this resulted in increased housing costs and possible liability to the Agency.

11. She also stated that she had been the one to reduce the previous three-day intent to suspend to a one-day suspension. She felt she was being lenient and hoped that this would impress upon the Appellant the duty to be exact in her work. She also testified that the Appellant has been trained on processing the paperwork which she handles.

12. The witness stated that she felt the current five-day suspension given was appropriate, as this was the third time the Appellant had made a paperwork error involving inmates. She added this was simply following the progressive disciplinary protocol.

13. On cross-examination, the witness stated she was not personally aware of any documentation existing for training for which the Appellant had received. The Appellee closed.

14. The Appellant, **Loretta Wilkerson**, called herself as her only witness. The Appellant stated that when she first became employed at the Department of Corrections, she received no initial training. However, since beginning, she admitted she has received some training, primarily involving which forms to use and a checklist to follow. She has also been taught to use the CourtNet electronic system.

15. Appellant then testified that she and one other employee do the serve-out portion of the paperwork, which results in a calculation of the time in which an inmate should serve. She also added that her workload is heavy and that she sometimes feels overwhelmed. However, she did admit that in this instance, the error she made was that she simply did not open a second e-mail which was sent to her.

16. 101 KAR 1:345, Section 1 and 4(1).

Section 1. General Provision.

Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

...

Section 4. Suspension. (1) A suspension shall not exceed thirty (30) working days.

FINDINGS OF FACT

1. The Appellant received two e-mails on or about June 23, 2014, from Brandi Hawkins at or about 11:27 a.m. These e-mails contained information concerning, among others, inmates Sanders and Miles.

2. Although the e-mails had the same date and time and were both sent by Brandi Hawkins to the Appellant, the attachments to these e-mails contained different statutory references. The Appellant admittedly failed to open both e-mails. Had she done so, she would have realized that inmates Sanders and Miles were eligible for immediate release. Her failure to open both e-mails resulted in these two inmates serving fourteen days longer than they should have.

3. The Appellant's disciplinary history includes a written reprimand and a one-day suspension prior to this action, both of which involved paperwork error calculations involving inmates.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Appellee has carried its burden of proof by a preponderance of the evidence to show that the Appellant committed the actions with which she is charged. This failure to properly process the serve out paperwork for these inmates constituted poor work performance and was a violation of 101 KAR 1:345. Under all the surrounding circumstances the five-day suspension of the Appellant was taken for just cause and was neither excessive nor erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LORETTA WILKERSON VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-248)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Any document filed with the Personnel Board shall be served on the opposing party.

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer R. Hanson Williams** this 5th day of January, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Stafford Easterling
Loretta Wilkerson



JUSTICE AND PUBLIC SAFETY CABINET

Steven L. Beshear
Governor

J. Michael Brown
Secretary

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LaDonna H. Thompson
Commissioner

KIMBERLY POTTER-BLAIR
DEPUTY COMMISSIONER

August 28, 2014

Loretta Wilkerson

Dear Mrs. Wilkerson,

On July 22, 2014 you were provided notice of my intention to suspend you. After careful consideration of the reports submitted by your supervisors, I have determined that the clear weight of evidence establishes that you did commit the charges contained in the notice.

Therefore, based on the authority of 101 KAR 1:345, Section 1 and 4 and in accordance with KRS 18A.095, you are hereby notified that you are suspended from duty and pay for a period of five (5) working days beginning of business on Tuesday September 2, 2014 and continuing through close of business on Monday, September 8, 2014. You are to return to work on Tuesday September 9, 2014 at your normal working time.

You are suspended from your position with the Department of Corrections for the following specific reasons: Poor Work Performance, i.e., since receiving a written reprimand on February 27, 2014 and a one day suspension on June 19, 2014, you failed to improve in your work performance. Your failure to accurately perform your job duties resulted in three inmates being released days before / after their minimum expiration date.

On June 24, 2014 it was brought to my attention that you authorized the release of Susan Schell #208421 prior to being revoked by the parole board. Inmate Schell appeared on your serve out list with a Parole Violator's status in the header. The mistake was discovered when you went to complete the external movement but were not given the option to release the inmate on minimum expiration. After being calculated for revocation it was determined that inmate Schell's minimum expiration date is October 9, 2014. This error resulted in the inmate being released one hundred five (105) days prior to her expected release date.


On July 8, 2014 it was brought to my attention that on June 23, 2014 you received an email from Brandi Hawkins with a list of inmates who were eligible to serve out, three being immediate releases due to having their parole revoked on that date.

Stephen Miles #260325 and Gregory Sanders #251356 were two of the three inmates who you were responsible for reviewing due to being housed in Jefferson County. You did not review either inmate for discharge on the date the email was received.

July 7, 2014 Emily Elliott received a telephone call from staff at Marshall County Jail asking about release paperwork for inmate Stephen Miles. While investigating the email from June 23rd was discovered which led to both inmate Miles and Sanders being released July 7, 2014; 14 days past their expected release date.

A copy of this notice shall be provided to the Personnel Cabinet in accordance with Personnel Rules. As provided by KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice excluding the date the notification is received. An appeal must be filed in writing using the attached appeal form in and in the prescribed on the form.

Sincerely,



Kim Potter-Blair
Deputy Commissioner

LT/sew

Personnel Board Appeal Form

Cc: Tim Longmeyer, Secretary- Personnel Cabinet
LaDonna Thompson, Commissioner- Department of Corrections
Director- Division of Personnel Services
Ashley Sullivan, Branch Manager- Offender Information Services Branch
Agency Personnel File